

Meir Libersohn
Complaint – Avianca
1 of 13

BEFORE THE DEPARTMENT OF TRANSPORTATION
OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS
WASHINGTON, D.C.

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Meir Libersohn,)
third-party complainant)

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v.) Docket DOT-OST-2020-____

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Avianca)

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COMPLAINT OF MEIR LIBERSOHN

Comments with respect to this document should be addressed to:

Meir Libersohn

E-mail: mlibers@yahoo.com

Dated: July 01, 2020

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COMPLAINT OF MEIR LIBERSOHN

1. This complaint arises out of AVIANCA's non-compliance with the Department's rules regarding consumers' right to be refunded for flights cancelled by airlines, even for reasons outside the carriers' control, as described in the Department's "Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel"¹, hereinafter referred to as the "Enforcement Notice".

¹ Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the COVID-19

Public Health Emergency on Air Travel (April 3, 2020) at https://www.transportation.gov/airconsumer/enforcement_notice_refunds_apr_3_2020.
See also 14 CFR § 259.5(b)(5), and Enhancing Airline Passenger Protections, 76 Fed. Reg. 23110-01, at 23129 (Apr. 25, 2011).

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2. This complaint also arises out of Avianca's retroactive application of changes to its refund policies, which constitutes an unfair or deceptive practice within the meaning of 49 U.S.C. § 41712.

I. FACTS

A. Avianca's refund policy for cancelled flights

3. Avianca's current policy is that customers who purchased nonrefundable flight tickets are not entitled to receive full refunds for flights cancelled or changed by the carrier due to reasons outside its control, including cancellations attributed to the COVID-19 pandemic. Avianca does offer a refund done at their website but then insist only offers or flight vouchers or credits in such situations and claims in its United States English website that "in accordance with government regulations", that such bookings are ineligible for a refund.

B. Avianca's obligations

4. Avianca is an airline that is authorized to operate flights from and to the United States and is therefore subject to the Department's jurisdiction and bound by the rules enunciated in the Enforcement Notice, which apply to U.S. and foreign airlines operating flights from, to and within the United States.

5. In its Enforcement Notice, and based on existing federal regulation, the Department reminds airlines about their obligation to refund consumers for flights cancelled by the carriers themselves, even if the reason of the flight

² Under 49 USC § 41712, the Department is authorized to investigate and decide whether a U.S. air carrier, foreign air carrier, or ticket agent engaged in an unfair or deceptive practice in air transportation or the sale of air transportation. The Department is also authorized to issue orders to stop an unfair or deceptive practice after notice and opportunity for a hearing.

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disruptions are outside the carrier's control, and regardless of the nonrefundability/penalty provisions of the ticket purchased by the consumers.

6. In page 2 of its Enforcement Notice, the Department lists the actions noncomplying airlines must take to avoid enforcement action, as follows:

- a. the carrier contacts, in a timely manner, the passengers provided vouchers for flights that the carrier cancelled or significantly delayed to notify those passengers that they have the option of a refund;
- b. the carrier updates its refund policies and contract of carriage provisions to make clear that it provides refunds to passengers if the carrier cancels a flight or makes a significant schedule change;
- c. the carrier reviews with its personnel, including reservationists, ticket counter agents, refund personnel, and other customer service

professionals, the circumstances under which refunds should be made.

7. On May 12, 2020, the department issued a notice³ in the form of answers to frequently asked questions regarding airline ticket refunds. In the answer to question 4 of the notice, the Department reiterates that airlines may not retroactively apply changes to their refund policies and must honor the policies in place at the time of ticket purchase.

C. Avianca's non-compliance and violations

8. Avianca's policy of not issuing prompt refunds for flights cancelled for reasons outside its control, and regardless of the nonrefundability and

³ U.S. Department of Transportation, Office of Aviation Enforcement and Proceedings, Frequently Asked Questions Regarding Airline Ticket Refunds Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel (See answer to question 4: "May airlines and ticket agents retroactively apply new refund policies?") <https://www.transportation.gov/sites/dot.gov/files/2020-05/Refunds%20->

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cancellation penalty provisions of the purchased, is in direct violation of its obligations and of the consumers right to be refunded as per the rules detailed in the Department's Enforcement Notice.

9. Before March 19, 2020 Avianca's policies indicated that consumers can receive refunds for schedule changes and cancellations attributed to the COVID-19. However, and since that date, Avianca changed its refund policies for cancellations and schedule changes in a way that negatively affects consumers by no longer permitting refunds. The new policy is applied by Avianca based on the date of the cancellation or schedule change, and regardless of the policy in place at the time the passenger purchased the ticket. This represents a retroactive change in policy and represents an unfair or deceptive practice within the meaning of 49 U.S.C. § 41712.

10. Many airlines are complying with their obligations to refund passengers, especially after the issuance of the Enforcement Notice on April 3rd. These airlines will be in an unfairly disadvantageous financial situation if other airlines, such as Avianca are allowed to continue practices that violate the same obligations without incurring any penalty.

II. REQUESTED RESOLUTION

11. I ask that the Department of Transportation:

(1) Exercise its authority under 49 USC 41712 to open an investigation of Avianca for its non-compliance with the Department's Enforcement Notice and the regulations on which the notice is based;

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(2) Order Avianca to comply with its obligation to promptly refund for flights cancelled or significantly delayed, regardless of the reason of such

flight disturbances.

(3) Order Avianca to:

- a. contact, in a timely manner, the passengers provided vouchers for flights that the carrier cancelled or significantly delayed to notify those passengers that they have the option of a refund;
- b. update its refund policies, contract of carriage and tariff provisions to make clear that it provides full refunds to passengers if the carrier cancels a flight or makes a significant schedule change, regardless of the reason and the nonrefundability and cancellation penalty provisions of the tickets purchased by the passengers;
- c. review with its personnel, including reservationists, ticket counter agents, refund personnel, and other customer service professionals, the circumstances under which refunds should be made.

(4) Impose appropriate civil penalties on Avianca..

Respectfully submitted,

/s/

Meir Libersohn

Certificate of Service

I hereby certify that I have, this 01st day of July 2020 caused a copy of the foregoing Complaint to be served by electronic mail on the following persons:

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/s/
